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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Cynthia Susan Mullin, a married woman,
Plaintiff,

v.

Scottsdale Healthcare Corporation Long
Term Disability Plan, an ERISA benefit
plan; United of Omaha Life Insurance
Company, a plan fiduciary; and
HonorHealth, a plan administrator,

Defendants.

Case No.

COMPLAINT

For her claims against Defendants Scottsdale Healthcare Corporation Long Term Disability Plan (the “Plan”), United of Omaha Life Insurance Company (“Omaha”), and HonorHealth (collectively “Defendants”), Plaintiff Cynthia Mullin (“Ms. Mullin” or “Plaintiff”) alleges as follows:

JURISDICTION, VENUE AND PARTIES

1. This action arises under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. (“ERISA”).

2. The Plan is a purported ERISA benefit plan established and maintained by Scottsdale Healthcare (“SHC”) for the benefit of its employees. The Plan is a welfare benefit plan that offers group long-term disability (“LTD”) benefits.

3. Ms. Mullin was a participant and beneficiary of the Plan as an employee of SHC; her employment spanned nearly two decades. As part of her employment, she

1 received STD and LTD coverage. Ms. Mullin was first covered under the Policy on
2 April 26, 2010, presumably because that is the date that HonorHealth purchased the
3 Policy from Omaha.

4 4. In 2013, SHC merged with John C. Lincoln to create HonorHealth in 2014.

5 5. SHC was the Plan Administrator, Plan Sponsor, and Employer.

6 6. HonorHealth is now the Plan Administrator, Plan Sponsor, and Employer.

7 7. At all relevant times, Omaha administered claims for HonorHealth under
8 the Plan, acted on behalf of the Plan, and acted as an agent for HonorHealth.

9 8. Omaha fully insures LTD benefits under the Plan with a Policy, Group
10 Contract Number GUD-09P58. It administers HonorHealth's self-funded, short-term
11 disability ("STD") benefits from HonorHealth general assets, whereas Omaha both
12 administers and pays for LTD benefits.

13 9. As administrator of both STD and LTD benefits, Omaha handles eligibility
14 determinations for whether a participant qualifies for both STD and LTD benefits.

15 10. Ms. Mullin is a married person. She currently resides in Maricopa County,
16 Arizona and has been a resident of Maricopa County at all relevant times.

17 11. The Plan and HonorHealth, a large corporation, have their principal place
18 of business in the state of Arizona. Omaha has its principal place of business in the state
19 of Nebraska. Defendants Omaha and HonorHealth are licensed and authorized to do
20 business in Maricopa County, Arizona, and reside and are found within Maricopa
21 County within the meaning of the jurisdiction and venue provisions of ERISA, 29 U.S.C.
22 § 1132 and 28 U.S.C. § 1391.

23 12. This Court has jurisdiction over the subject matter of this action under
24 ERISA, 29 U.S.C. §§ 1132(a), 1132(e)(1), and 28 U.S.C. §§ 2201-02 (declaratory
25 judgments).

26 13. Venue is proper in this Court under ERISA, 29 § 1132(e)(1) and 28 U.S.C.
27 § 1391(b).
28

20. Ms. Mullin worked as a Clinical Director of Nursing for HonorHealth until leaving work on March 26, 2014 due to her inability to work.

The LTD Plan

21. To be eligible for LTD benefits, Ms. Mullin must satisfy the definition of “Disability,” which is defined as follows: Disability and Disabled means that because of an Injury or Sickness, a significant change in Your mental or physical functional capacity has occurred in which You are: (a) prevented from performing ***at least one*** of the Material Duties of Your Regular Job on a part-time or full-time basis; and (b) unable to generate Current Earnings which exceed 99% of Your Basic Monthly Earnings due to that same Injury or Sickness. A Clinical Director of Nursing is considered to be Ms. Mullin’s Regular Job under the Plan.

22. After a Monthly Benefit has been paid for 2 years, Disability and Disabled means that Ms. Mullin is unable to perform all of the Material Duties of any Gainful Occupation. Gainful Occupation means an occupation, for which You are reasonably fitted by training, education or experience, is or can be expected to provide You with Current Earnings at least equal to 85% of Basic Monthly Earnings within 12 months of Your return to work.

23. As of 2014, the Plan language for HonorHealth has become more stringent – and therefore less favorable for claimants - than it was prior to the merger.

24. Material Duties means the essential tasks, functions, and operations relating to an occupation that cannot be reasonably omitted or modified. In no event will We consider working an average of more than 60 hours per pay period in itself to be a part of material duties. One of the material duties of Your Regular Job is the ability to work for an employer on a full-time basis.

25. Regular Job means the job description defined by the Policyholder for the position You are performing prior to Disability.

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1 26. Ms. Mullin is entitled to receive 66 2/3% of her Basic Monthly Earnings
2 under the Plan, because she participated in the Buy-Up Plan coverage. Basic Monthly
3 Earnings means Ms. Mullin's gross income received from the HonorHealth for the
4 month immediately prior to the month in which her Disability began.

5 27. The Plan provides an incentive for participants to work while Disabled. As
6 a work incentive, a participant receiving a wage or earning profit will receive the
7 Monthly Benefit, unless the sum of (a) the Gross Monthly Benefit while Disabled plus
8 (b) Current Earnings exceeds 100% of Basic Monthly Earnings. If this sum exceeds
9 100%, of the Basic Monthly Earnings, then the Monthly Benefit will be reduced by that
10 excess amount.

11 28. Under the Plan, Ms. Mullin is entitled to receive LTD benefits until she
12 reaches her Social Security Normal Retirement Age ("SSNRA"), which is 67 years old,
13 or until she is no longer Disabled.

14 29. Ms. Mullin was required to participate in an administrative appeal process.
15 Thereafter, she had no other administrative appeal options available to her. As such, she
16 filed this lawsuit under ERISA.

17 ***Ms. Mullin's Application for Benefits and Omaha's Denial***

18 30. In the merger between SHC and John C. Lincoln, nursing departments
19 were restructured, including Ms. Mullin's department.

20 31. On March 22, 2014, Ms. Mullin was in a motor vehicle accident (the
21 "MVA"). She was rear-ended and had gone through a back surgery on or about late-
22 2013.

23 32. On or about March 26, 2014, following a meeting with between Ms.
24 Mullin and Human Resources, the new Chief Nursing Officer from the merger informed
25 Ms. Mullin in a "transition" meeting that Ms. Mullin would need to either step down
26 from her position or participate in a "performance improvement process."
27
28

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1 33. Ms. Mullin's employee reviews, including her most recent the end of 2013,
2 had never indicated any issues with her performance and had actually demonstrated her
3 above average performance.

4 34. Due to the recent MVA, which exacerbated her medical conditions, and the
5 stress from changes at work, Ms. Mullin ended up in the emergency room. On March 27,
6 2014, Ms. Mullin submitted a claim for STD benefits. Omaha accepted the claim on
7 behalf of SHC, now HonorHealth.

8 35. Omaha was aware of Ms. Mullin's employment circumstances when
9 approving STD benefits on behalf of SHC, now HonorHealth.

10 36. Prior to the MVA, Ms. Mullin suffered from a multitude of medical
11 conditions, but the MVA caused a significant, worsening change to her existing
12 conditions and also caused new health issues. The stress from political changes at work
13 only added to Ms. Mullin's health issues.

14 37. After paying Ms. Mullin's remaining STD benefits (the maximum number
15 of days which STD benefits will be paid is 180 days in a rolling calendar year), Omaha
16 sent Ms. Mullin a letter dated June 4, 2014, advising her that it was reviewing her claim
17 for transition to LTD benefits. It was at this transition that HonorHealth stopped paying
18 benefits and Omaha began fully insuring the Plan. After review of the file, Omaha
19 denied Ms. Mullin's LTD benefits in a letter dated September 9, 2014 (the "Denial").

20 38. The Denial found Ms. Mullin's Regular Job to be classified as "medium."
21 After a lengthy recitation of medical records without any meaningful analysis, Omaha
22 denied Ms. Mullin's claim, seemingly because there was not a "significant change" in
23 her conditions, and because "the documentation is lacking in acute physical and
24 psychiatric findings to support any restrictions and limitations that would prevent [Ms.
25 Mullin] from performing [her] Regular Job as a Clinical Director of Nursing."

26 39. Ms. Mullin retained legal counsel on or about September 2014, who
27 revoked all authorizations Omaha had on file in a letter dated October 3, 2014: "this
28

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1 letter serves as your notice that any prior authorizations signed by Ms. Mullin to obtain
2 medical records, medical information, personal information, or other information of any
3 kind are hereby revoked **to the extent that such authorization allows you to contact**
4 **any sources of information in any manner other than by writing.** You may continue
5 to use the previously signed releases or authorizations to obtain records and reports in
6 writing, or by telephone conference arranged through our office and electronically
7 recorded, so as to be made part of the record. Any other direct communication outside of
8 writing will be considered an invasion of Ms. Mullin's privacy." (emphasis in original).

9
10 *Ms. Mullin's Appeal and Final Denial*

11 40. Ms. Mullin timely appealed the Denial in a letter dated March 6, 2015 and
12 provided supplemental evidence in memorandum dated March 24, 2015, which Omaha
13 accepted for review (collectively the "Appeal"). In the Appeal, with the assistance of
14 counsel, Ms. Mullin explained her medical history, providing substantiating evidence
15 that a "significant change" occurred in her conditions. She listed exhaustively the many
16 "acute physical findings" in the medical records, contrary to Omaha's assertion that the
17 record lacked such findings. Because Omaha had denied the claim without a job
18 description, and because HonorHealth refused to provide one to Ms. Mullin prior to the
19 Appeal, she submitted evidence of her job duties for Omaha's consideration. She
20 explained how, under the Plan, she was definitively unable to perform *at least one* of the
21 Material Duties of Your Regular Job on a part-time or full-time basis, qualifying her to
22 benefits under the Plan. Ms. Mullin addressed all of Omaha's reasons for the Denial, to
23 the extent that she could glean the reasons from Omaha's convoluted Denial.

24 41. On appeal, Omaha secured information that it should have secured prior to
25 Denial. It requested information about the MVA, and Ms. Mullin's legal counsel
26 facilitated that request by providing document. Thereafter, on or about May 14, 2015,
27 Omaha requested that Ms. Mullin attend an independent neuropsychological evaluation
28 (the "INE"). At first, Omaha was using vendor Psybar, LLC to arrange the INE, but it

1 ultimately used MLS Group of Companies, Inc. (“MLS”). However, both companies
2 sent out notices for different INE dates with different doctors.

3 42. On May 15, 2015, Omaha then noticed the need for an additional 45 days
4 to render a determination based on its request for an INE.

5 43. Once Omaha determined its desired INE vendor, doctor, and date, Ms.
6 Mullin’s counsel sent a letter dated June 4, 2015, objecting to the INE on several
7 grounds that had already been conveyed to Omaha through telephonic conversations.
8 Besides the untimeliness and unreasonableness of the INE, Ms. Mullin had already
9 undergone neuropsychological testing on February 14, 2015. This testing was provided
10 to Omaha. Notwithstanding objections, Ms. Mullin agreed to undergo the INE, although
11 without any understanding of why the testing was relevant to the claim.

12 44. Ms. Mullin participated in the INE with Dr. H. Daniel Blackwood on June
13 9, 2015. The INE testing was overall favorable to Ms. Mullin’s claim.

14 45. Unbeknownst to Ms. Mullin, Omaha also secured a peer review from Dr.
15 Neal Small on appeal. Without valid authorization, he contacted Ms. Mullin’s treating
16 provider directly. Omaha also secured a Occupational Analysis and Addendum – the
17 first in the file – from Mr. Patricia Thal. Both file reviews were obtained through
18 University Disability Consortium (“UDC”), a vendor that Omaha routinely uses for the
19 denial of claims.

20 46. Omaha upheld its Denial in a letter dated June 26, 2015 (the “Final
21 Denial”). Omaha found new reasons for Denial previously undisclosed to Ms. Mullin
22 and relied heavily on Dr. Small’s file review and unauthorized contact with Dr. DeBrino,
23 as well as Dr. Blackwood’s INE report. Omaha requested a job description for the first
24 time from HonorHealth and provided new vocational analysis, this time based on a “light
25 strength occupation” instead of “medium.”

26 47. On or about June 30, 2015, HonorHealth terminated Ms. Mullin’s
27 employment, because her leave had been exhausted and LTD benefits denied.
28

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1 48. The Policy is purportedly the Plan, which is out of compliance with
2 ERISA requirements for a written plan document. *See* 29 U.S.C. § 1102(b)(1)-(4).

3 49. Omaha acted under a structural conflict of interest in both administering
4 and paying out on claims under the Plan.

5 50. On information and belief, HonorHealth has not properly conferred Omaha
6 with discretionary authority to interpret the Plan and to make eligibility determinations
7 regarding the Plan.

8 51. Ms. Mullin is entitled to *de novo* review of her claims, because
9 HonorHealth did not properly confer discretionary authority to Omaha. In the
10 alternative, Ms. Mullin is entitled to *de novo* review, because given Omaha's structural
11 conflict of interest and its "wholesale and flagrant violations of the procedural
12 requirements of ERISA," *de novo* review is warranted.

13 52. Omaha should not be entitled to any deference in its decision-making in
14 light of the facts and circumstances of this claim.

15 53. Ms. Mullin's medical conditions never improved and, in fact, have
16 worsened March 2014.

17 54. Ms. Mullin is totally disabled from her Regular Job and any Gainful
18 Occupation for which she is reasonably fitted by training, education, and experience.

19 55. Ms. Mullin continues to be disabled as defined by the Plan for LTD
20 benefits eligibility.

21 56. Ms. Mullin should be entitled to LTD benefits until she is 67 years old.

22 57. Ms. Mullin exhausted her administrative remedies under the Plan.

23 58. Ms. Mullin satisfied all of the jurisdictional prerequisites to filing a claim,
24 and her claim is timely before this Court.

25 59. Ms. Mullin is entitled to additional benefits from HonorHealth as a
26 disabled employee including, but not limited to, health insurance, life insurance,
27 supplemental LTD benefits, and retirement/pension credits.
28

1 60. Ms. Mullin is entitled to seek any and all relief allowed pursuant to
2 ERISA, including equitable remedies, in order to enforce her rights under the Plan.

3
4 **COUNT I**
5 **(Recovery of Plan Benefits)**
6 **(Defendants Omaha and the Plan)**

7 61. All previous and subsequent paragraphs are incorporated by reference.

8 62. The Plan is an Employee Welfare Benefit Plan as defined in ERISA, 29
9 U.S.C. § 1002. Defendants are the Plan, Plan administrators, or Plan fiduciaries of the
10 Plan under ERISA.

11 63. The Plan represents LTD coverage and a promise to provide LTD benefits
12 until Ms. Mullin is no longer disabled under the terms of the Plan.

13 64. Ms. Mullin became disabled in 2014 and continues to be disabled. She is
14 unable to work pursuant to the terms of the Plan. She has claimed the benefits under the
15 Plan to which she is entitled.

16 65. Ms. Mullin reasonably expected that her conditions met the requirements
17 of Disability as defined by the Plan for LTD benefits, and that she would receive benefits
18 under the Plan until age 67 or until she was no longer disabled.

19 66. Despite the coverage of Ms. Mullin's disability, Omaha has improperly
20 terminated LTD benefits to Ms. Mullin in breach of the Plan and ERISA. Omaha's
21 collective conduct was arbitrary, capricious, an abuse of discretion, not supported by
22 substantial evidence, and was clearly erroneous. In light of Omaha's structural conflict
23 of interest and wholesale and flagrant procedural violations of ERISA, Ms. Mullin
24 should be entitled to *de novo* review.

25 67. Omaha's structural conflict of interest manifests in its handling of both
26 STD and LTD benefits for HonorHealth. Despite requests for the STD file, and despite
27 the STD file's clear relevance to Omaha's handling of Ms. Mullin's LTD claim, Omaha
28 has not disclosed relevant documents related to the STD claim. Moreover, Ms. Mullin is
informed and believes that, as a result of the merger between SHC and John C. Lincoln,

1 Omaha was aware that the definition of Disability under the Plan would become more
2 stringent.

3 68. Ms. Mullin met the definition of disability under the Short-Term Disability
4 Program (the “STD Program”) and should be eligible for LTD benefits. Omaha’s
5 approval of STD benefits but denial of LTD benefits is an abuse of discretion and a
6 result of its structural conflict of interest. In short, the STD Program requires a
7 participant to be disabled from the “Essential Functions” of her job, which means the
8 fundamental job duties of Ms. Mullin’s held and detailed in her position’s job
9 description. Under the STD Program, “[i]f your physician cannot substantiate your
10 disability by objective findings, you may be required to see a physician selected by the
11 claims management company for an independent evaluation. Failure to cooperate with
12 such requests may result in an interruption in benefits.” “Proof of disability may consist
13 of records from the physician, written reports, x-rays and any other medical records, as
14 well as evidence that you continue to be under the appropriate care and treatment of a
15 physician.” Ms. Mullin was approved for all of her STD benefits, meaning that she
16 provided objective medical evidence to Omaha that she could not perform the essential
17 functions of her job. Omaha found her disabled for STD benefits, yet not for LTD
18 benefits.

19 69. Omaha has been determined to deny Ms. Mullin’s claim because of its bias
20 against Ms. Mullin due to her employment issues, which constitutes a breach of
21 fiduciary duty. It failed to provide Ms. Mullin with a description of any additional
22 material or information “necessary” to “perfect the claim” and to do so “in a manner
23 calculated to be understood by the claimant.” Omaha “hid the ball” from Ms. Mullin by
24 failing to advise her of what was needed to approve the LTD claim, instead changing its
25 reasons for denial. Omaha’s adversarial actions precluded Ms. Mullin from responding
26 to Omaha’s rationale for denial at the administrative level.
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1 70. Omaha wrongfully denied Ms. Mullin's disability benefits without
2 providing a coherent explanation for its denials, and in a way that conflicts with the plain
3 language of the Plan, violating 29 U.S.C. §§ 1109, 1132.

4 71. Omaha did not properly consider all of the available evidence when
5 denying Plaintiff's benefits. In doing so, Omaha failed to conduct a full and fair review.
6 By way of example, it did not address several medical records and diagnostic testing
7 results as part before terminating the LTD claim.

8 72. Omaha misstated medical evidence for its own financial benefit. It
9 overstated and excessively relied on its own file reviewers. Moreover, Omaha tainted its
10 medical file reviewers in the review process by giving the reviewers inaccurate
11 information regarding Ms. Mullin, while also failing to provide its reviewers with all of
12 the relevant evidence.

13 73. On information and belief, Omaha did not insulate the appeals reviews
14 from its initial determination and used the same supervisor to orchestrate the denials. *See*
15 29 C.F.R. 2560.503-1(h)(3)(ii), (h)(4) (requires claim fiduciaries to "[p]rovide for a
16 review that does not afford deference to the initial adverse benefit determination and that
17 is conducted by an appropriate named fiduciary of the plan who is neither the individual
18 who made the adverse benefit determination that is the subject of the appeal, nor the
19 subordinate of such individual.").

20 74. Omaha routinely emphasized reports that favored a denial of benefits while
21 deemphasizing other reports that suggested a contrary conclusion.

22 75. Omaha failed to investigate Ms. Mullin's claim adequately, including its
23 failure to conduct an in-person medical evaluation on all relevant medical conditions
24 *prior to* denial, which would have been beneficial to a full and fair review of Ms.
25 Mullin's claim. It then unreasonably requested an IME on appeal in violation of ERISA.
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1 76. The INE's purpose was an attempt to gather last minute, unfavorable
2 evidence - effectively "stacking the deck" against Ms. Mullin - instead of fairly
3 evaluating the evidence already provided on Appeal.

4 77. Omaha has unreasonably withheld relevant documents throughout the
5 entire claim, including *but not limited to* the STD file, complete internal notes, and the
6 job description. Omaha's failure to comply with ERISA's disclosure requirements and
7 poor management of the file demonstrates its abuse of discretion and improper claims
8 handling.

9 78. Omaha failed to properly consider the opinions of Ms. Mullin's treating
10 and examining physicians. It also failed to reasonably consider Ms. Mullin's reported
11 symptoms and limitations, and side effects of her medications, in determining whether
12 she was disabled under the Plan. Omaha knew about Ms. Mullin's worsening issues and
13 additional surgeries before and following the Appeal but failed to give proper weight to
14 those findings. Indeed, Omaha acted arbitrarily and capriciously when it selectively
15 reviewed Ms. Mullin's medical records, relying only on those portions of her medical
16 records that supported a denial of benefits.

17 79. Omaha improperly demanded objective medical evidence of Ms. Mullin's
18 pain and engrafted terms onto the Plan. For example, Omaha denied LTD benefits
19 because Ms. Mullin did not have a "severe mental impairment," which is not a
20 requirement of the Plan. The Plan requires that Ms. Mullin experience a significant
21 change to her mental capacity. Nowhere does the Plan define "severe mental
22 impairment" – this is a superfluous term used by Omaha as a basis for its denials.
23 Likewise, the Plan does not specifically preclude "work stress" as a reason for
24 Disability; while Omaha may not be sympathetic to Ms. Mullin's work stress, there is no
25 Plan exemption on this basis.

26 80. On information and belief, the file reviewers and vendors were financially
27 incentivized to deny Ms. Mullin's claim. MLS and UDC are biased companies, which
28

1 frequently provide insurance companies with reviews that are favorable for the denial of
2 claims. Omaha's physician reviewer, Dr. Small, and Ms. Thal were provided by UDC.
3 Dr. Blackwood was provided by MLS. Omaha knew or should have known that MLS
4 and UDC are biased companies. As a company-wide practice, Omaha uses MLS and
5 UDC, because it knows they provide reviews that are favorable to the denial of claims.

6 81. On information and belief, Omaha uses UDC in a majority of denials and
7 supplies a significant portion of UDC's income.

8 82. Omaha used MLS and UDC in Ms. Mullin's claim, because it anticipated
9 that the reviews would be unfavorable for the continuation of her benefits.

10 83. Omaha unreasonably failed to ensure that MLS and UDC provided
11 unbiased and/or qualified reviewing doctors for purposes of its claims administration.

12 84. Dr. Small and Ms. Thal had no reasonable basis for their recommended
13 restrictions and limitations and reached their opinions based on insufficient evidence or
14 investigation.

15 85. On information and belief, Dr. Small and Ms. Thal on numerous occasions
16 to conduct claims reviews or other evaluations through UDC and have a history of bias
17 against claimants.

18 86. Omaha's physician reviewer, Dr. Small, spoke with Ms. Mullin's treating
19 physician without proper authorization, which is an abuse of discretion and violation of
20 the law.

21 87. Omaha failed to reasonably or coherently explain why it credited the file
22 reviewers over Ms. Mullin's treating physicians.

23 88. The file reviewers were not given the Plan or other important records for
24 reaching its decision that Ms. Mullin could perform sedentary work.

25 89. Given Ms. Mullin's medical conditions and symptoms, she cannot perform
26 at least one of the material and substantial duties of her regular job, or any gainful
27 occupation.
28

1 90. Ms. Mullin has exhausted her administrative remedies.

2 91. Pursuant to the coverage provided in the Plan, to ERISA 29 U.S.C. §
3 1132(a)(1)(B), and to applicable federal and state common law, Ms. Mullin is entitled to
4 recover all benefits due under the terms of the Plan, and to enforce her rights under the
5 Plan.

6 92. Ms. Mullin is entitled to reinstatement of any other employee benefits that
7 were terminated, discontinued, or suspended as a result of the termination of her
8 disability benefits. She is entitled to a restoration of the *status quo ante* before LTD
9 benefits were wrongfully terminated.

10 93. Pursuant to 29 U.S.C. § 1132(g), Ms. Mullin is entitled to recover her
11 attorneys' fees and costs incurred herein from Omaha.

12 94. Ms. Mullin is entitled to prejudgment interest on the benefits to which she
13 is entitled and on her damages at the highest legal rate until paid.

14
15 **COUNT II**
16 **(Breach of Fiduciary Duty)**
17 **(Defendant Omaha)**

18 95. All previous and subsequent paragraphs are incorporated by reference.

19 96. Under 29 U.S.C. §§ 1132(a)(2)-(3), this Court may enjoin any act or
20 practice that violates ERISA or the terms of the Plan, as well as grant other appropriate
21 equitable relief, provided that such relief is not recoverable under 29 U.S.C. §
22 1132(a)(1)(B).

23 97. Based on the facts of this case, Ms. Mullin has "other equitable relief"
24 available to her in several forms, including but not limited to surcharge, because the
25 relief available under 29 U.S.C. § 1132(a)(1)(B) does not make Ms. Mullin whole for her
26 losses from Omaha's breaching conduct. A surcharge is a kind of equitable monetary
27 remedy against a trustee, which puts the beneficiary in the position she would have
28 attained but for the trustee's breach. Surcharge extends to a breach of trust committed by

1 a fiduciary encompassing any violation of a duty imposed upon that fiduciary. In equity,
2 this Court must make Ms. Mullin whole following Omaha's breach of trust and mold the
3 relief necessary to protect the rights of the participant. Therefore, the Court has broad
4 discretion to fashion appropriate relief.

5 98. Omaha is a fiduciary and owes fiduciary duties to Plan participants,
6 including Ms. Mullin. Under 29 U.S.C. § 1104(a), Omaha is required discharge its duties
7 with the care, skill, prudence, and diligence under the circumstances that a prudent man
8 acting in like capacity and familiar with such matters would use under 29 U.S.C. §
9 1104(a). Under ERISA, which is founded in trust principles, Omaha is required to
10 administer claims in the *best interests* of beneficiaries and participants as part of its
11 fiduciary duty.

12 99. In multiple ways throughout the administration of Plaintiff's claim, Omaha
13 breached its fiduciary duties pursuant to 29 U.S.C. § 1132(a)(2)-(3). Omaha's arbitrary
14 and capricious claims handling generally constitutes a breach of fiduciary duty, because
15 Omaha's claims handling was discharged imprudently and caused Ms. Mullin harm that
16 cannot be recovered under 29 U.S.C. § 1132(a)(1)(B). Omaha's actions have caused Ms.
17 Mullin serious harm. She has been forced to drain her savings accounts, rack up credit
18 card debt, and her family relationships have been injured. She could lose her house now
19 due to Omaha's denial of LTD benefits. Moreover, Ms. Mullin now owes significant
20 attorneys' fees because of Omaha's breaching conduct. By arbitrarily and capriciously
21 denied Ms. Mullin's benefits, Omaha breached its fiduciary duties. To the extent that
22 Omaha's arbitrary and capricious denial of benefits caused Ms. Mullin harm
23 unrecoverable under 29 U.S.C. § 1132(a)(1)(B), then that harm is recoverable under 29
24 U.S.C. §§ 1132(a)(2)-(3).

25 100. On information and belief, Omaha instructs and/or incentivizes certain
26 employee(s) to terminate fully insured LTD claims and appeals based on bias. Ms.
27 Mullin is informed and believes that Omaha's employees are trained in administering
28

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1 claims in the best interests of Omaha, not Plan participants. Omaha used information
2 gained from the STD process undisclosed to Ms. Mullin and demonstrated bias and
3 malice against Ms. Mullin through its employees. Instead of fully and fairly reviewing
4 the medical evidence, Omaha found reasons to deny Ms. Mullin's claim, because of its
5 adversarial belief that Ms. Mullin left work due to performance issues and not due to
6 medical conditions. Omaha's failure to act prudently and in the best interests of Ms.
7 Mullin is a breach of fiduciary duty requiring appropriate equitable relief following
8 discovery Omaha's conduct as it relates to Ms. Mullin's claim.

9 101. Omaha was unjustly enriched as a result of its breach of fiduciary duty
10 violations, because it wrongfully withheld Ms. Mullin's benefits for its own profit.

11 102. Omaha engaged in several procedural violations in an attempt to circumvent
12 its obligations under ERISA, and these violations are by definition under 29 U.S.C. §
13 1132(a)(3) conduct that can be enjoined by this Court. For example, Omaha sought an
14 IME on appeal and used the IME as a justification for "tolling" deadlines under ERISA.
15 Omaha is attempting to circumvent its "full and fair" requirements under ERISA by
16 creating "special circumstances" to justify a 45-day extension to respond to Ms. Mullin's
17 appeal. Seemingly, Omaha did not even attempt to complete a timely review within the 45
18 days. Ms. Mullin is entitled to equitable relief, which could take the form of mandamus
19 relief, preventing Omaha from tolling its statutory deadlines in order to get evaluations
20 that claimants such as Ms. Mullin can never respond to following the close of the appeals
21 process.

22 103. Omaha acted with malice and in bad faith against Ms. Mullin due to her
23 "job stress," which constitutes a violation of its fiduciary duty.

24 104. ERISA "does not elsewhere adequately remedy" the injuries caused to Ms.
25 Mullin by Omaha's breach of fiduciary duty violations.

26 105. As a direct and proximate result of the breaches of fiduciary duty, Ms.
27 Mullin suffered actual, *significant* financial harm and has incurred financial expense.
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1 113. On information and belief, HonorHealth, as the Plan Administrator, did not
2 periodically review Omaha's actions as a delegated fiduciary under the Plan.

3 114. On information and belief, the Plan Administrator's failure to periodically
4 review Omaha's actions as a delegated fiduciary under the Plan was unreasonable and
5 constituted a breach of fiduciary duty.

6 115. On information and belief, if the Plan Administrator did periodically
7 review Omaha's actions as a delegated fiduciary under the Plan, then its periodic review
8 was unreasonable and constituted a breach of fiduciary duty.

9 116. On information and belief, the Plan Administrator is liable for Omaha's
10 actions, because the Plan Administrator violated its fiduciary obligations by continuing
11 Omaha's delegation as Plan Administrator and/or by failing to protect Plan participants
12 from Omaha's conflicted and adversarial claims handling.

13 117. Ms. Mullin is entitled to injunctive and/or mandamus relief under 29
14 U.S.C. § 1132(a)(2)-(3). She is entitled to enjoin any act or practice by Defendants that
15 violate ERISA or the Plan, and/or she is entitled to see other appropriate equitable relief
16 that is traditionally available in equity. Because of Omaha's breach of fiduciary duties to
17 Plan participants, and because of HonorHealth's failure to appropriately monitor Omaha
18 and protect Plan participants and beneficiaries from Omaha's breaching conduct in light
19 of its dual role as STD and LTD claims administrator, the Plan Administrator should be
20 enjoined from employing Omaha as both its administrator for STD claims and insurer on
21 LTD claims. The Plan Administrator should further be required to implement
22 appropriate procedures in oversight of Omaha and/or any other insurers of STD and
23 LTD benefits under the Plan, which would maintain accountability for the administrative
24 responsibilities it seemingly freely delegates to Omaha.

25 118. Ms. Mullin relied on the Plan and HonorHealth to her detriment.

26 119. Ms. Mullin was actually harmed by HonorHealth's failure to oversee
27 Omaha's conduct. As a longstanding employee of SHC, now HonorHealth, who invested
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her entire career in working for the company, she relied on HonorHealth to provide benefits that would be there for her. She is entitled to surcharge relief as a result of HonorHealth's breach of fiduciary duties.

120. Ms. Mullin is informed and believes and Omaha has targeted claims under the Plan, including Ms. Mullin's, and HonorHealth's failure to protect its participants is a breach of fiduciary duty.

121. Ms. Mullin is entitled to equitable relief for HonorHealth's breach of their fiduciary duties, including for the breaches of fiduciary duties committed by any agents or third parties for Defendants.

122. Pursuant to 29 U.S.C. § 1132(g), Ms. Mullin is entitled to recover her attorneys' fees and costs incurred herein from HonorHealth and Omaha.

123. Because HonorHealth breached its fiduciary duties, Ms. Mullin was actually harmed.

124. Ms. Mullin is entitled to enjoin any act or practice by Defendants, which violates ERISA or the Plan, and/or she is entitled to seek other appropriate equitable relief that is traditionally available in equity.

COUNT IV
(Statutory Penalties)
(Defendant HonorHealth)

125. All previous paragraphs are incorporated by reference.

126. Pursuant to 29 U.S.C. § 1132(c)(1)(B), "any administrator who fails to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary... may in the court's discretion be personally liable to such participant or beneficiary."

127. Under 29 U.S.C. § 1024(b)(4), "[t]he administrator shall, upon written request of any participant or beneficiary furnish a copy of the latest updated summary plan description, and the latest annual report, any terminal report, the bargaining

1 agreement, trust agreement, contract, or other instruments under which the plan is
2 established or operated.”

3 128. Ms. Mullin, through legal counsel, requested Plan document disclosures in
4 a letter dated October 3, 2014 pursuant to ERISA. This letter enumerated several
5 requested documents, including Form 5500 filings and controlling Plan documents.

6 129. HonorHealth, represented by outside legal counsel, responded in writing to
7 Ms. Mullin’s counsel in a letter dated November 13, 2014 providing incomplete
8 disclosures.

9 130. HonorHealth failed or refused to comply with its disclosure obligations
10 under 29 U.S.C. § 1024(b).

11 131. On information and belief, HonorHealth intentionally withheld information
12 that Ms. Mullin was legally entitled to under ERISA.

13 132. In the November 19, 2013 letter, Ms. Mullin’s counsel specifically
14 requested that if HonorHealth refused to disclose any of the requested information, that it
15 provide an explanation as to why it believed the information was exempted from its
16 disclosure obligations under ERISA.

17 133. In responding to Ms. Mullin’s Plan documents request, HonorHealth failed
18 to disclose copies of several Plan documents required under ERISA and that Ms. Mullin
19 is informed and believes exist. Ms. Mullin was not provided with copies of the most
20 recent documents governing the operation of the Plan. HonorHealth disclosed what Ms.
21 Mullin believes to be an outdated version of the Plan (Policy No. GUD-09P58, revised
22 February 26, 2013) but without complete riders; in its disclosures, Omaha provided a
23 more recent version of the Plan, revised October 1, 2013. The Policyholder name differs
24 between the Policy versions. Ms. Mullin neither received documents establishing
25 HonorHealth’s purchase of the Plan nor copies of the latest annual report (Form 5500
26 Series). She did not receive updated and complete Summary Plan Description documents
27 or a summary of the Plan’s annual financial report. The Plan Administrator is required
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1 by law to furnish each participant with a copy of these documents, and it has failed to do
2 so.

3 134. To date, Ms. Mullin has received inconsistent copies of Plan documents
4 from both HonorHealth and Omaha.

5 135. HonorHealth did not provide an explanation for its failure and/or refusal to
6 disclose documents, including the Form 5500 filing for the most recent Plan year.

7 136. HonorHealth acknowledges that if a participants “request[s] a copy of Plan
8 documents or the latest annual report from the Plan and do[es] not receive them within
9 30 days, [she] may file suit in a Federal court. In such a case, the court may require the
10 Plan Administrator to provide the materials and pay [a participant] up to \$110 a day until
11 [she] receive[s] the materials, unless the materials were not sent because of reasons
12 beyond the control of the Administrator.”

13 137. HonorHealth is aware of its Plan Administrator responsibilities, and
14 HonorHealth has no justifiable excuse for its failure to disclose Plan documents.
15 HonorHealth had the benefit of legal counsel to assist in its disclosure obligations; yet,
16 HonorHealth did not comply with its obligations under ERISA.

17 138. Of the documents disclosed by HonorHealth, Ms. Mullin’s right to Plan
18 documents is memorialized under a participant’s “Statement of ERISA Rights,” so
19 HonorHealth knew of its disclosure obligations.

20 139. The disclosure requirements of ERISA are not empty suggestions for
21 fiduciaries such as HonorHealth. The disclosure requirements amount to specific
22 guidelines imposed for the purpose of ensuring that plan participants, such as Ms.
23 Mullin, can follow and gauge the availability and character of ERISA plans, including
24 the very structure of the benefit plan itself. Without adequate disclosure, Ms. Mullin
25 cannot know or enforce her rights to benefits or anticipate alterations in benefits under
26 the Plan.
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140. As the Plan Administrator, HonorHealth is liable to Ms. Mullin for its failure to properly disclose documents pursuant to 29 U.S.C. § 1132, et. seq.

141. Under 29 U.S.C. § 1132(c)(1), the Court may impose a statutory penalty of up to \$110 per day for each day that HonorHealth failed to provide a complete and proper disclosure of Ms. Mullin's Plan documents.

142. Penalties began to accrue thirty (30) days after the date Ms. Mullin made a written request to HonorHealth for her plan documents, which is November 3, 2014.

143. Ms. Mullin is entitled to penalties, as well as interest, costs, and attorneys' fees.

144. HonorHealth continues to accrue penalties under ERISA until it properly discloses requested documents pursuant to ERISA.

WHEREFORE, on all claims, Ms. Mullin prays for entry of judgment against Defendants as set forth in this Complaint, which includes:

- A. All past and future LTD benefits under the terms of the Plan;
- B. Clarifying and determining Ms. Mullin's rights to future benefits under the terms of the Plan;
- C. Any statutory penalties that may be available to Ms. Mullin as a result of Defendants' violations of ERISA;
- D. All other equitable relief that is proper as a result of Defendants' breach of fiduciary duties;
- E. An award of Ms. Mullin's attorneys' fees and costs incurred herein;
- F. An award of prejudgment interest on benefits and damages at the highest legal rate until paid; and
- G. For such and further relief as the Court deems just, equitable, and reasonable.

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2 Dated this 7th day of August 2015,

3 OBER & PEKAS, P.L.L.C.
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5 By: s/ Erin Rose Ronstadt
6 Erin Rose Ronstadt
7 Attorney for Plaintiff
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